

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

RM - 9097

In the Matter of )  
 )  
 Petition for Rulemaking to Amend )  
 47 C.F.R. § 76.1003 – Procedures for )  
 Adjudicating Program Access Complaints )

CS Docket No. \_\_\_\_ - \_\_\_\_

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**RAINBOW MEDIA HOLDINGS, INC.'s OPPOSITION TO  
 AMERITECH NEW MEDIA, INC.'s PETITION FOR RULEMAKING**

Rainbow Media Holdings, Inc. ("Rainbow"), pursuant to 47 C.F.R. § 1.405(a) of the Commission's rules, files this opposition to Ameritech New Media, Inc.'s ("Ameritech") Petition for Rulemaking.<sup>1/</sup> Ameritech has requested that the Commission amend its program access rules to shorten the complaint process, guarantee a right to discovery, and impose damages or fines for all violations of section 628 of the Communications Act of 1934. The Commission should reject Ameritech's request to amend the program access rules.<sup>2/</sup>

Ameritech's petition would inject the Commission into the middle of efforts by programmers and distributors to settle program access disputes through negotiations. Ameritech has already sought to expand the reach of section 628 beyond its statutory limits, rather than to

<sup>1/</sup> Rainbow manages American Movie Classics, Bravo, MuchMusic, The Independent Film Channel, Romance Classics, various regional sports programming services, and various regional news programming services.

<sup>2/</sup> In addition to the reasons set forth herein, Rainbow endorses the arguments against Ameritech's petition set forth in the opposition of The National Cable Television Association.

make the investments necessary to develop its own programming.<sup>3/</sup> The Commission should not permit itself to become a party to any of Ameritech's self-serving efforts to enlarge the scope of program access, and should reject the petition. The program access rules presume that the negotiations over the price, terms, and conditions in programming contracts are in the first instance a matter for programmers and distributors, rather than the government. Likewise, the rules are not intended as a substitute for the development of new program services, as Ameritech seems to believe.

Ameritech's petition lacks any factual basis. Contrary to its assertions, Ameritech, through its programming packager Americast, negotiated for and voluntarily entered into agreements with SportsChannel Chicago and SportsChannel Ohio on February 28, 1996, and June 5, 1996, respectively to license these regional sports programming services. Since that time, Ameritech has distributed these services and other Rainbow programming without interruption. No amendment of the rules was necessary for Ameritech to obtain this programming.<sup>4/</sup>

Ameritech also claims that the program access rules "are inconsistent with the procompetitive thrust of the substantive law of Section 628" because "the current rules encourage

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<sup>3/</sup> See Ameritech New Media Reply Comments at 4, 9, cited in Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133, at ¶¶ 153-59 (Jan. 2, 1997) ("Third Report"). Cf. Comments of NYNEX Corp. at 3-7, Implementation of Section 302 of the Telecommunications Act of 1996, CS Docket No. 96-46 (filed Apr. 1, 1996); Reply Comments of Tele-TV at 3-7, Implementation of Section 302 of the Telecommunications Act of 1996, CS Docket No. 96-46 (filed Apr. 11, 1996).

<sup>4/</sup> Ameritech's petition attaches an article on Cablevision from the New York Times, ostensibly to illustrate Cablevision's intent to withhold sports programming. The article is irrelevant to Ameritech's petition. Contrary to the impression Ameritech seeks to create by including the article, Ameritech is and has been distributing the SportsChannel Chicago programming service in Chicago and the SportsChannel Ohio service in Cleveland and Columbus.

defendants . . . to protract and manipulate the process without providing any disincentives for them to engage in dilatory tactics.”<sup>5/</sup> This claim is equally baseless. During the past year, the Commission has resolved at least ten program access complaints despite the time constraints and resource drain caused by implementing the Telecommunications Act of 1996.<sup>6/</sup> Among those ten complaints was one filed by Americast, against Continental Cablevision, Inc. and Home Box Office, which was dismissed four months after it was filed.<sup>7/</sup>

Because the complaint process has operated as intended, the Commission has rejected previous requests to expedite the complaint procedures or to impose damages.<sup>8/</sup> Just a few months ago, the Commission concluded that the “procedures established in the rules for program access complaints already provide for an expedited procedure to resolve such disputes.”<sup>9/</sup> At the same time, the Commission reaffirmed its commitment to “process program access complaints in the most expeditious fashion possible, and to continue vigilant and meaningful enforcement policies in this area.”<sup>10/</sup>

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<sup>5/</sup> Petition at 7.

<sup>6/</sup> Third Report at ¶ 151.

<sup>7/</sup> See Corporate Media Partners d/b/a/ Americast v. Continental Cablevision, Inc., 11 FCC Rcd. 7735 (Cable Serv. Bur. 1996), application for review denied, Corporate Media Partners d/b/a/ Americast v. Continental Cablevision, Inc., FCC 97-88 (Mar. 17, 1997).

<sup>8/</sup> Id. at ¶¶ 159-60; see also Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution and Carriage, 10 FCC Rcd. 1902, 1911, at ¶ 18 (1994).

<sup>9/</sup> Third Report at ¶ 159.

<sup>10/</sup> Id. The Commission also noted that it had not been provided sufficient evidence “to persuade us that penalties are necessary at this time to ensure effective enforcement of our program access rules.” Id. at ¶ 160.

Despite the Commission's conclusions, Ameritech cites the SportsChannel services to "prove" that programmers use the procedures in the program access rules as a "built-in delay mechanism in the Section 628 resolution process."<sup>11/</sup> Again, the facts contradict Ameritech's claim. Americast had been distributing SportsChannel Chicago programming for approximately seven months when Americast, not SportsChannel, insisted on re-opening negotiations over the price and terms for distributing SportsChannel Chicago and SportsChannel Ohio. SportsChannel agreed to accommodate Americast by re-opening those negotiations. When Americast subsequently notified SportsChannel that it intended to file a program access complaint, SportsChannel responded by negotiating in good faith to modify the terms to resolve the dispute. That Charles Dolan, Chairman of Cablevision, himself discussed the matter directly with Richard Notebaerte, CEO of Ameritech, further reflects how seriously SportsChannel approached the discussions. Indeed, SportsChannel offered to modify the agreements to accommodate Americast's concerns, but Americast rejected the offer and instead chose to file its complaint.<sup>12/</sup>

In the months since Americast filed its complaint, SportsChannel has acted with the utmost good faith. For example, while negotiating a settlement with Americast, SportsChannel has permitted Americast to continue distributing SportsChannel programming, even though its contracts have expired. In addition, SportsChannel has offered modified contracts containing reasonable rates and terms to accommodate Americast's concerns. Americast has confirmed that the financial terms in these modified contracts no longer are at issue, and the parties have been

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<sup>11/</sup> Petition at 23.

<sup>12/</sup> See Corporate Media Partners d/b/a Americast v. Rainbow Programming Holdings, Inc., CSR File No. 4873-P (filed Dec. 6, 1996). Americast brought the complaint against Rainbow, but Rainbow was not a signatory to any of the carriage agreements at issue.

attempting to finalize the few remaining non-financial issues. It thus came as a surprise when an Ameritech representative informed a salesperson employed by one of Rainbow's services that an agreement with Americast was not near. Ameritech followed that comment by filing this petition. SportsChannel still believes that it is on the verge of concluding its agreements with Americast. In fact, in expectation thereof and as a further showing of good faith, Southern New England Telephone Company, a partner in Americast, has been authorized by SportsChannel to distribute its programming in portions of Connecticut with the understanding that the rates and terms in the modified contracts would govern. Rainbow must question Ameritech's motives for filing this petition now. Ameritech appears more interested in fomenting conflict and confusion than in resolving disputes.

Ameritech's proposed amendments to the program access rules would further discourage negotiations by turning every program access complaint into the equivalent of full-blown civil litigation, raising the costs for all parties. This is clearly contrary to the Commission's stated goal of "encourage[ing] resolution of program access disputes through negotiations between the parties in an effort to avoid time-consuming, complex adjudication."<sup>13/</sup> As the Commission has stated, "a policy favoring private settlement and alternative dispute resolution conserves Commission resources and is thus in the public interest."<sup>14/</sup> Under Ameritech's proposal, by contrast, a request for discovery (which no doubt would become the norm) would trigger five

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<sup>13/</sup> See Optel, Inc. v. American Cablesystems of California, Inc. d/b/a Continental Cablevision, Inc., DA 97-478 (rel. Mar. 6, 1997) ("Optel"); see also Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992 – Development of Competition and Diversity in Video Programming Distribution and Carriage, 8 FCC Rcd 3359, 3389, 3416, (1993).

<sup>14/</sup> See Optel, supra note 13.

additional briefs as well as interrogatories, objections to interrogatories, and requests for written documents.<sup>15/</sup> Depositions also will increase the burden on the parties (not to mention the Commission staff or an ALJ who has to resolve deposition disputes). Unquestionably, Ameritech's "narrowly targeted changes" will have a broad impact that will further strain the Commission's limited resources. If a party desires full-blown litigation, rather than file a program access complaint, it should pursue an antitrust action in court, a right Congress preserved in the 1992 Cable Act.<sup>16/</sup>

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<sup>15/</sup> See Proposed § 76.1003(i).

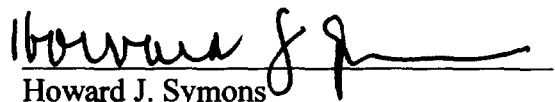
<sup>16/</sup> See Cable Television Consumer Protection and Competition Act of 1992, Pub. Law No. 102-385, § 27.

## **Conclusion**

Ameritech's petition, motivated by public relations and lobbying interests, is nothing more than a rehash of previous complaints about the program access rules. As the Commission has noted, the rules are working as intended and competition in the video marketplace is increasing. Ameritech's petition for a rulemaking to amend the program access rules should be denied.

Respectfully submitted,

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July 2, 1997

**CERTIFICATE OF SERVICE**

I, Michael B. Bressman, hereby certify that on this 2<sup>nd</sup> day of July 1997, I caused copies of the foregoing "Opposition to Ameritech's Petition for Rulemaking" to be sent to the following:



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